

IN THE SENATE

SENATE BILL NO. 1040

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-2719, IDAHO CODE, TO  
CLARIFY LANGUAGE REGARDING FILING REQUIREMENTS OF CERTAIN APPEALS WHEN  
PUNISHMENT OF DEATH HAS BEEN IMPOSED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-2719, Idaho Code, be, and the same is hereby  
amended to read as follows:

19-2719. SPECIAL APPELLATE AND POST-CONVICTION PROCEDURE FOR CAPITAL  
CASES -- AUTOMATIC STAY. The following special procedures shall be inter-  
preted to accomplish the purpose of eliminating unnecessary delay in carry-  
ing out a valid death sentence.

(1) When the punishment of death is imposed the time for filing an ap-  
peal shall begin to run when the death warrant is filed.

(2) The death warrant shall not be filed until forty-two (42) days after  
the judgment imposing the death sentence has been filed, or, in the event a  
post-conviction challenge to the conviction or sentence is filed, until the  
order deciding such post-conviction challenge is filed.

(3) Within forty-two (42) days of the filing of the judgment imposing  
the punishment of death, and before the death warrant is filed, the defendant  
must file any legal or factual challenge to the sentence or conviction that  
is known or reasonably should be known. The defendant must file any claims  
of ineffective assistance of appellate counsel within forty-two (42) days of  
the Idaho supreme court issuing a remitter in the unified appeal, unless the  
case is remanded for further proceedings.

(4) Any remedy available by post-conviction procedure, habeas corpus  
or any other provision of state law must be pursued according to the proce-  
dures set forth in this section and within the time limitations of subsec-  
tion (3) of this section. The special procedures for fingerprint or foren-  
sic DNA testing set forth in sections 19-4901(a)(6) and 19-4902(b) through  
(g), Idaho Code, are fully applicable in capital cases and are subject to  
the procedures set forth in this section, and must be pursued through a pe-  
tition filed within the time limitations of subsection (3) of this section or  
by July 1, 2002, whichever is later.

(5) If the defendant fails to apply for relief as provided in this sec-  
tion and within the time limits specified, he shall be deemed to have waived  
such claims for relief as were known, or reasonably should have been known.  
The courts of Idaho shall have no power to consider any such claims for relief  
as have been so waived or grant any such relief.

(a) An allegation that a successive post-conviction petition may be  
heard because of the applicability of the exception herein for issues  
that were not known or could not reasonably have been known shall not be  
considered unless the applicant shows the existence of such issues by

1 (i) a precise statement of the issue or issues asserted together with  
2 (ii) material facts stated under oath or affirmation by credible per-  
3 sons with first hand knowledge that would support the issue or issues  
4 asserted. A pleading that fails to make a showing of excepted issues  
5 supported by material facts, or which is not credible, must be summarily  
6 dismissed.

7 (b) A successive post-conviction pleading asserting the exception  
8 shall be deemed facially insufficient to the extent it alleges matters  
9 that are cumulative or impeaching or would not, even if the allegations  
10 were true, cast doubt on the reliability of the conviction or sentence.

11 (c) A successive post-conviction pleading asserting the exception  
12 shall be deemed facially insufficient to the extent it seeks retroac-  
13 tive application of new rules of law.

14 (6) In the event the defendant desires to appeal from any post-convic-  
15 tion order entered pursuant to this section, his appeal must be part of any  
16 appeal taken from the conviction or sentence. All issues relating to convic-  
17 tion, sentence and post-conviction challenge shall be considered in the same  
18 appellate proceeding.

19 (7) If post-conviction challenge is made under this section, questions  
20 raised thereby shall be heard and decided by the district court within ninety  
21 (90) days of the filing of any motion or petition for relief timely filed as  
22 provided by this section. The court shall give first priority to capital  
23 cases. In the event the district court fails to act within the time speci-  
24 fied, the supreme court of Idaho shall, on its own motion or the motion of  
25 any party, order the court to proceed forthwith, or if appropriate, reassign  
26 the case to another judge. When the supreme court intervenes as provided,  
27 it shall set a reasonable time limit for disposition of the issues before the  
28 district court.

29 (8) The time limit provided in subsection (7) of this section for dis-  
30 position of post-conviction claims may be extended only upon a showing of  
31 extraordinary circumstances which would make it impossible to fairly con-  
32 sider defendant's claims in the time provided. Such showing must be made un-  
33 der oath and the district court's finding that extraordinary circumstances  
34 exist for extending the time shall be in writing and shall be immediately re-  
35 ported to the supreme court, which shall at once independently consider the  
36 sufficiency of the circumstances shown and determine whether an extension of  
37 time is warranted.

38 (9) When a judgment imposing the penalty of death is filed, the clerk  
39 and the reporter shall begin preparation of the transcripts of the trial, and  
40 other proceedings, and the clerk's transcript.

41 (10) When the procedures specified in this section and section 19-2827,  
42 Idaho Code, have been carried out and a remittitur issued, and an execution  
43 date set as provided by law, the defendant shall be deemed to have exhausted  
44 all state remedies.

45 (11) Any successive petition for post-conviction relief not within the  
46 exception of subsection (5) of this section shall be dismissed summarily.  
47 Notwithstanding any other statute or rule, the order of dismissal shall not  
48 be subject to any motion to alter, amend or reconsider. Such order shall not  
49 be subject to any requirement for the giving of notice of the court's intent  
50 to dismiss. The order of dismissal shall not be appealable.

1           (12) A stay of execution while the special appellate procedures speci-  
2       fied herein are followed and during the pendency of automatic review of death  
3       sentences shall be automatically entered by the clerk of the supreme court  
4       at the time the district court transmits to the supreme court the report re-  
5       quired by section 19-2827, Idaho Code. If the sentence is upheld, the clerk  
6       shall dissolve such stay when the remittitur is filed. Thereafter the dis-  
7       trict court shall set a new execution date.